



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
BILLINGS REGULATORY OFFICE
POST OFFICE BOX 2256
BILLINGS, MONTANA 59103-2256

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December 18, 2009

Regulatory Branch
Montana State Program
Corps No: **NWO-2008-02874-MTH**

Subject: Yellowstone River - 6 M NE Livingston CN# 1298001

Montana Department of Transportation
Attn: Ms. Heidy Bruner
PO Box 201001
Helena, Montana 59620-1001

Dear Ms. Bruner:

We have reviewed the Montana joint application you submitted for a Department of the Army (DA) permit for bridge pier #2 maintenance on US Highway 89 over the Yellowstone River. The project is located near Livingston in Sections 26 and 27, Township 1 South, Range 10 East, in Park County, Montana.

Specifically, you requested authorization for the following work:

Work Item	Description
a.	Placement of a drilled shaft at each end of the pier with an integral pier cap.
b.	Removal of the existing pier following completion of the drilled shafts and integral cap.
b.	Shaft diameter will be approximately 5-7 feet across and 64 feet long. Drilling the shafts will impact between approximately 20 to 39 square feet and will require placement of approximately 46 to 91 cubic yards of concrete.

Under the authority of Section 404 of the Clean Water Act, DA permits are required for the discharge of fill material into waters of the U.S. including the area below the ordinary high water mark of stream channels and lakes or ponds connected to the tributary system, and wetlands adjacent to these waters. Isolated waters and wetlands, as well as man-made channels and ditches, may be waters of the U.S. in certain circumstances, which must be determined on a case-by-case basis. Under the authority of Section 10 of the Rivers and Harbors Act of 1899, DA authorization is required for any work on, over, or under any federally listed navigable waters of the U.S. The Yellowstone River is a federally listed navigable water of the U.S.

A previously completed approved jurisdictional determination (JD) remains on file for this project. The JD is available for your review on our website at <https://www.nwo.usace.army.mil/html/od-rmt/mthome.htm>.

Based on the information provided we have determined that the proposed work is authorized by DA Nationwide Permit 23, found in the March 12, 2007 Federal Register (Vol. 72, No. 47, 11092), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General Conditions that must be adhered to for this authorization to remain valid. Please

note that deviations from the original plans and specifications of your project could require additional authorization from this office.

In addition to the General and Regional Conditions, your project is also subject to the following Special Conditions:

Condition	Description
1.	The project will be constructed as described in the joint application and as shown on drawings received in this office on December 2, 2009.
2.	All earthwork operations will be carried out in such a manner that sediment runoff and soil erosion to the river are controlled.
3.	Work access will be via barge or temporary work bridges extending from the southern shoreline out to Pier 2. If any additional temporary fills are required for access or dewatering the work area, then a joint application must be submitted and authorization obtained prior to placing the temporary facilities.
4.	The permittee shall take all reasonable and necessary precautions to prevent interference with general navigation. Signs must be placed on the shore at river access points and on the highway bridge that inform river users of the presence of barges, cables, and equipment.
5.	Provide at least one designated boat opening in the dominant flow channel in a location that is easily navigated by novice floaters in non-motorized boats launching at points upstream of this bridge. The opening must be free of all hazards and obstructions to navigation when projected 100 feet upstream and downstream from the temporary openings. Obstructions and hazards include objects such as temporary bridges, existing bridge piers, work barges or platforms, cables, and the new drilled shaft piers. Maintain at least 7 feet of vertical clearance between the water surface and the low beam elevation through the waterway openings.
6.	Inform local print and broadcast media outlets that a project is underway that may present hazards to the river users. While the project is underway, encourage the local media to regularly remind the Public that work is in progress and river users should be advised of any dangers the project presents.
7.	Where practicable, perform all in-channel work during periods of low flow or in the dry.
8.	All construction debris will be disposed of on land in such a manner that it cannot enter a waterway or wetland. Remove all debris or waste material that falls into the Yellowstone River.
9.	Do not disturb wetland, riparian, or stream bank vegetation to accommodate temporary staging areas, temporary storage areas, or temporary parking areas.
10.	Only clean, non polluted materials will be utilized for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of potentially polluted materials to the water by natural runoff or by leaching.
11.	All temporary facilities and fills will be removed in their entirety and impacted areas returned to pre-construction contours and conditions. This includes, but is not limited to: cables, barges, temporary bridges, piles, and platforms.

Although an Individual DA permit involving a public interest review will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal, and local permits as required. Please note that deviations from the approved plans and specifications of your project could require additional authorization from this office.

The Montana Department of Environmental Quality provided water quality certification for this Nationwide Permit 23 (see General Condition 21 on the enclosed fact sheet). Enclosed is a copy of the

Section 401 certification which includes General Conditions for the Nationwide Permits, all of which must be complied with for that Section 401 Certification to remain valid. This does not eliminate the need to obtain other permits that may be required by that agency.

You, as the permittee, understand and agree that, if future operations by the U.S. require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers (Corps), to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

This verification will be valid until **December 18, 2011**. In accordance with the terms and conditions of the Nationwide Permit, you are responsible for all work accomplished. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 26, the enclosed Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

We are interested in your thoughts and opinions concerning your experience with the Corps' Omaha District Regulatory Program. We have placed an automated version of our Customer Service Survey form at <http://per2.nwp.usace.army.mil/survey.html>. At your request, we will mail a paper copy that you may complete and return to us by mail or fax.

Please contact Shannon Johnson if you have any questions at (406) 657-5910 and reference Corps File Number NWO-2008-02874-MTB.

Sincerely,



Todd N. Tillinger
Montana Program Manager

Enclosures

COMPLIANCE CERTIFICATION

Corps File Number: NWO-2008-02874-MTB
Name of Permittee: Montana Department of Transportation
County: Park County, Montana
Date of Issuance: December 18, 2009
COE Project Manager: Shannon Johnson

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US Army Corps of Engineers
Helena Regulatory Office
10 West 15th Street, Suite 2200
Helena, Montana 59626-9705

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the conditions of this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date